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SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 November 1998, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6)

Initial report of Israel (E/1990/5/Add.39; E/C.12/Q/ISR/1; in-session document with no symbol containing the replies of the Government of Israel to questions raised in the list of issues)

1. At the invitation of the Chairperson, the delegation of Israel took places at the Committee table.

2. Mr. BLASS (Israel), introducing Israel's initial report on implementation of the Covenant, said that the regrettable delay in submitting the report was the result of his Government's determination to submit as comprehensive a report as possible. The finished product, the most extensive review of the status of economic, social and cultural rights in Israel to date, had been disseminated to senior judges and ministerial officials, who now comprised an unofficial interdepartmental network for exchange of information on human rights, soon to be formalized so as to create a permanent apparatus for reporting on the various human rights instruments to which Israel was a party. When preparing the report, the Government had also listened to the comments and criticisms of representatives of a number of non-governmental organizations (NGOs), at a conference organized by the Ministries of Justice and Foreign Affairs.

3. The fiftieth anniversary of the Universal Declaration of Human Rights was also the fiftieth anniversary of the State of Israel. One year prior to its adoption of the Universal Declaration, the General Assembly had adopted resolution 181 (II) on the future government of Palestine, providing for the establishment of a Jewish State and an Arab State in Palestine. Had the Arab world, including the Arab population of Palestine, accepted that resolution, the history of the Middle East in the second half of the twentieth century would have been very different. Furthermore, if Israel were not now forced to spend so much on national security, it would have more resources with which to promote implementation of the rights set forth in the Covenant.

4. Israel was a Jewish and a democratic State. While there was occasionally tension between those terms, there was certainly no contradiction. All citizens, Jews and non-Jews, were "shareholders" in the Jewish State, within which they were entitled to equal rights. Israel was proud of being a Jewish State, and was equally proud of being a democracy, albeit an imperfect one. Since 1948 its population had increased tenfold, the State had been subjected to constant armed attacks, and its Arab minority had suffered the ramifications of the Arab-Israeli conflict, which had impeded its legitimate quest for equal rights. Within the Jewish community, fundamental differences among Jews coming from different countries of the world had been the major cause of the difficulties experienced by some Jewish groups in finding their place in society.

5. Despite those obstacles, Israel was a true representative democracy in which the enjoyment of rights by all its residents and citizens had improved significantly over the years. A recent study conducted by Jewish and Arab researchers for the NGO Sikkuy had shown that 86 per cent of Jews and 83 per cent of Arabs would rather be citizens of Israel than of any other country. Life expectancy was one of the world's highest; levels of education and health care had risen; and infant mortality had decreased dramatically. Moreover, though disparities in levels between the two communities still existed, the rate of improvement was significantly higher in the Arab community. Public debate on all issues was free and robust and the status of women, too, had greatly improved.

6. The legal framework for addressing the unresolved problems was an interesting one. Israel had no formal written constitution, and its constitutional framework was set out in a series of basic laws. The process of enacting basic laws on human rights had begun only recently, and Israel did not yet have a full bill of rights. But it had not depended on a constitution in order to guarantee human rights: at the forefront of human rights protection were the courts of Israel, and in particular the Supreme Court. Any person who felt that his or her rights had been unlawfully denied or infringed could petition the Supreme Court, sitting as the High Court of Justice, on payment of a fee of about US$ 100, and without any obligation to be represented by a lawyer. If, after hearing the pleas, the Court found that the Government had acted unlawfully, it could order it to rectify the situation. Because decisions of the Supreme Court were universally binding, an individual petition often resulted in wide-ranging changes in government policy. It was thus not uncommon for NGOs to go to court to challenge the Government on social issues, discrimination or other policies or actions.

7. A judicial bill of rights had thus evolved. As a result of High Court decisions, people had freedom to choose their own occupations; the principles of freedom of speech and journalists' privilege, which were not embodied in statutes, had been established; and the Court had found in favour of women in important cases involving employment discrimination. The Supreme Court could even require a prosecutor to press criminal charges after a case had been closed, a power which had resulted, in one well-known case, in the court-martialling of a senior army officer for crimes committed, on his orders, against Palestinians. The judiciary was wholly independent, with judges chosen by a special committee on which politicians were in a minority, and serving until the mandatory retirement age of 70.

8. The Attorney-General enjoyed a unique status in Israel, in that his or her legal opinions were binding on the Government. That enabled many problems to be solved even before the cases reached court, through the Attorney-General's requiring significant changes in governmental policies.

9. In 1992, the judicial bill of rights had been supplemented by the Basic Laws on Human Dignity and Liberty and on Freedom of Occupation. The Supreme Court proposed to interpret the former as guaranteeing freedom of religion, of expression and of movement, as well as other accepted basic rights, and as prohibiting discrimination on the basis of race, religion, sex or national origin. The basic laws were also applicable to human rights violations by non-State actors. Those recent developments had been described as a

constitutional revolution, as they allowed, for the first time, substantive judicial review of Knesset statutes passed after the enactment of the basic laws. Continuing that positive trend, three additional basic laws, dealing respectively with legal rights, with freedom of expression and association and with social rights, had been proposed by the Ministry of Justice in January 1998.

10. NGOs played a central role in protecting human rights in Israel, bringing court cases, drafting proposed legislation, lobbying in the Knesset, handling individual complaints and educating the public. All those activities received active governmental encouragement and cooperation. The Ministry of Education, the national police, the Border Guard and the army worked with NGOs in conducting human rights education and training programmes. Significant money grants had recently been made to NGOs defending the rights of women, children and disabled persons. All the recipient NGOs had challenged governmental policies in the courts, but that adversarial relationship had not stood in the way of cooperation. NGOs were quite open in their criticism of the Government, and rightly so. While the initial report obviously dwelt preferentially on Israel's accomplishments, it did not ignore the problems and the areas in which full equality and full enjoyment of human rights had yet to be achieved.

11. Several major pieces of civil rights legislation had been passed by the Knesset since the submission of Israel's initial report. The Freedom of Information Act of May 1998 gave statutory recognition to a right previously recognized only in case law, allowing people access to specific information on request - a development of great importance, as many social and economic rights were specified only in internal government regulations and guidelines, which would henceforth be available to the public. Exceptions to the right to receive information drew heavily on the laws of other democratic countries. A law of March 1998 had set up an Authority for the Advancement of the Status of Women, a unique body in that it included representatives both of government ministries and of NGOs. A new law prohibiting sexual harassment, primarily intended to protect women and homosexuals in all social and employment contexts, was one of the most comprehensive laws of its kind in the world. Under recently enacted equal opportunities legislation, corporations whose stock was publicly traded would henceforth be required to ensure the presence of at least one woman on their Board of Directors. The first part of an Equal Rights for Persons with Disabilities Law, providing for non-discrimination and for affirmative action in employment, required public transport to be made accessible to people with disabilities. Chapters of the same law dealing among other things with education and housing rights were currently before the Knesset. The recently enacted Public Housing (Purchase Rights) Law would enable people who had lived for many years in apartments owned by public housing companies to purchase them at a discount and with financial aid from the Government.

12. In the ongoing process of negotiations with the Palestinians, Israel had already transferred to them territory, and also powers and responsibilities over most of the Palestinians living in the West Bank and Gaza Strip. Everyone hoped that those negotiations would end with the signing of a Final Status Agreement which would put an end to the long and bitter struggle between the two sides. The signing on 23 October 1998 of the Wye River

Memorandum demonstrated the desire of the parties to continue the peace process in spite of all the difficulties that lay ahead. While it did not have full information on the status of economic, social and cultural rights in the territories administered by the Palestinian Authority, his delegation was willing to share with the Committee information relating to Israel's few remaining responsibilities in the West Bank and Gaza Strip.

13. A final important issue concerned the increase in unemployment and in the number of illegal foreign workers in Israel. Unemployment, estimated at 6.7 per cent in the initial report, now stood at about 9 per cent. While Israel's attractiveness to illegal foreign workers could be seen as a compliment, a balance must be found between creating jobs for Israeli residents and giving proper treatment to foreign workers.

14. Israel had striven to establish a judicial system under which the norms of human rights and natural justice were applied to all actions of Government, and to create a social welfare system that ensured human dignity and offered standards of living, levels of health care and life expectancy that were among the highest in the world. It would continue its efforts to secure full social, economic and cultural rights for all Israelis, men and women, Jews and Arabs. It had great hopes that the achievement of peace with the Palestinians and its neighbouring States would help solve many of the human rights problems it still faced. His delegation welcomed the discussion that would follow and the comments of the Committee, as well as the ongoing dialogue with NGOs which would continue once it had returned home.

15. Mr. ATLAN (Israel) said he wished to place the initial report of Israel in its proper perspective, drawing attention to certain threads that ran through the report as a whole and supplementing it with additional information, some of which was needed in the light of remarks made by Israeli NGOs since the publication of the report.

16. The report revealed an impressive level of realization of economic, social and cultural rights: Israel was proud to have developed a comprehensive welfare State over 50 years marked by wars and bloodshed and by massive waves of immigration. Poverty existed, but was exceptional, temporary, or both. Since the creation of the State in 1948, successive Governments had assumed responsibility for provision of social services far above the level of "safety nets". The rate of illiteracy had fallen from 12 per cent in 1970 to 4 per cent in 1995; the percentage of students dropping out of school had fallen from 4.5 per cent in 1992 to 2.5 per cent in 1995; the percentage of matriculation candidates had risen from 31 in 1990 to 38 in 1998; infant mortality had fallen by 43 per cent between 1982 and 1995; and around 95 per cent of Israeli children were now immunized. Under the Budget Bill for 1999, total public spending on social services would be about 23 per cent of gross domestic product (GDP), and there would be no decrease in public expenditures compared with 1998. According to the Centre for Study of Social Policy in Israel, between 1990 and 1998 transfer payments to individuals, total public expenditure on social services and real expenditure on education had all risen dramatically, despite the fact that those years had seen a 25 per cent population increase owing to massive immigration from the former Soviet Union and Ethiopia, as well as the Gulf War and the intifada uprising.

17. In almost every field covered by the report there had been a trend away from discretionary administrative programmes and benefits towards legal rights defined by statute and regulations and generally accompanied by judicial remedies. The Equal Rights for Persons with Disabilities Law already referred to had been initiated not by the Government but by a coalition of NGOs backed by eminent members of the Knesset. It was regrettable that, largely owing to a misunderstanding of the text of the Committee's guidelines, the issue of rights of disabled persons had not been systematically addressed in the report. His delegation was now submitting a summary of the report of the Commission on Comprehensive Legislation on the rights of people with disabilities, on which the new legislation was based. In the case of the Public Housing (Purchase Rights) Law, the Government feared that the legislation had actually gone too far, and might lead to a serious shortage of public housing units. Consequently, it was now trying to amend that law so as to ensure that recognition of public housing occupants' proprietary rights would not prove detrimental to the basic right of all to decent housing.

18. Almost every chapter of the report included a short survey of what was involved in making the change from a merely legal welfare State to a constitutional welfare State that gave serious consideration to economic, social and cultural rights as human rights. Only after ratification of the Covenant in 1991 had a truly constitutional discourse been initiated. The notion was a new one even for Israeli NGOs. In general, it was fair to say that the constitutionality of economic, social and cultural rights in Israel was still an open issue.

19. In addition to the examples of judicial decisions given in the report and in the reply to issue No. 3 showing the emerging trend towards constitutionalization, there had been recent encouraging signs that the courts in Israel were playing a more effective and socially sensitive role in the implementation of the social rights dealt with in the Covenant, even without their formal and systematic codification as human rights. The current legal situation was conditioned mainly by the novelty of the concept in Israeli political and legal culture, not due to denial or reluctance.

20. Important areas of concern remained, the main one being the de facto inequality between Jews and Arabs in Israel. Successive governments had publicly acknowledged the seriousness of the problem for over a decade, and the report contained extensive data reflecting the situation in areas such as infant mortality, mortgage realization, drop-out rates and matriculation, and showing that real efforts had been made to achieve equality.

21. As further evidence that the trend towards reducing inequality was continuous and genuine, he could now provide the Committee with a copy of the summary report of government ministries' activities in the non-Jewish sector, which related to 1997 and had been prepared at the same time as the report which Israel had submitted to the Committee on the Elimination of Racial Discrimination (CERD). He could cite two examples it provided of affirmative action taken to tackle discrimination. The first was the increase of 16.5 per cent in the development budget for the non-Jewish sector for the period 1992-1997. Even at a time of financial constraint, the Arab and Druze minorities were now allocated 35 per cent of development budgets, although Jews constituted almost 80 per cent of the Israeli population. Secondly,

although Israeli Arabs represented only about 20 per cent of the student population, their share of the Ministry of Education's development budget exceeded 30 per cent.

22. Although progress in tackling discrimination was often slower than one would wish, his Government had openly admitted its faults, and trusted that its efforts to deal with such problems would be fairly taken into account. In that regard, the existing inequality in the wages of working men and women should be considered in the light of the attempts made by the legislature in 1996 to provide workers, civil rights organizations and trade unions with new and effective judicial remedies.

23. Likewise, the Government, through the Foreign Workers Administration set up in 1997, had made active efforts to reduce the number of documented foreign workers. The importance of the Administration's information gathering role was reflected in the fact that it was routinely requested to appear before Knesset committees. As a further example, the Ministry of Labour and Social Affairs had trained 70 inspectors to operate in four specialized areas covering foreign workers, youth labour, minimum wages and equal opportunities. Previously, inspections had been confined to only one of those fields.

24. In conclusion, he said that Israel took seriously its responsibilities under the Covenant, and that gradual progress was being achieved in every relevant substantive category.

Land and people

25. Mr. ANTANOVICH asked why the report had not been produced until 1997, when it had been due in 1994.

26. Mr. SADI asked whether the delegation could describe clearly where the boundaries of Israel lay. Secondly, given the number of non-Jewish citizens, was the delegation prepared to accept that Israel was in fact a bi-national State?

27. Mr. RIEDEL said it was clear from the delegation's written responses to issues raised by the pre-session working group that Israel considered that, under the Vienna Convention on the Law of Treaties, the Covenant applied only to Israel's territory and not to the West Bank and Gaza Strip. However, in line with the reports of the CERD and the Human Rights Committee, which had discussed the matter extensively with the Israeli Government earlier in the year, the Committee's position was that the Covenant applied not only to the State of Israel but to all areas under its effective control. Although there was extensive disagreement as to the basis of such jurisdiction under international law, the four territories designated under the Interim Agreement and, if it came into force, the Wye River agreement were all generally accepted as subject to varying degrees of Israli control. It was also generally agreed that responsibility for the military occupation of the West Bank and Gaza Strip rested squarely with Israel. Those were matters over which the Palestinian Authority could exert no influence.

28. Thus, in the parts of the West Bank and Gaza Strip where most Palestinians lived and where Israel had handed over almost complete

administrative control, Israel regularly imposed border closures from outside which effectively restricted the movements of people over whom it professed no longer to exercise effective jurisdiction. The Committee's contention was that Israel exercised functional jurisdiction in varying degrees in the West Bank and Gaza Strip.

29. Mr. GRISSA, noting that the Israeli Ministry of Foreign Affairs had recently urged certain Israelis to occupy as much Arab land as possible before Israel's troops were withdrawn from the 13 per cent of territory specified in the Wye River agreement, asked the delegation whether that accorded with Israeli law.

30. Mr. AHMED asked how the delegation reconciled Israel's claim not to be responsible for the occupied territories with the fact that Israeli settlers were daily seizing land in the occupied territories under the protection of Israeli armed forces.

31. Mr. TEXIER recalled that the Human Rights Committee, having concluded that the Covenant on Civil and Political Rights, applied to all four occupied territories over which Israel exercised effective control, had asked Israel for additional relevant information on them. He felt that the Committee on Economic, Social and Cultural Rights should also be provided with such information, since the two international covenants on human rights were of equal status.

32. He shared Mr. Ahmed's concern about the forced resettlement of the occupied territories, and that expressed by CERD about the impact that process was having on those territories' demographic composition.

33. Ms. BONOAN-DANDAN said she had recently read a report by Israel's Geocartography Institute suggesting that over 40 per cent of Jewish students in Israel believed that Arabs in Israel had "too many rights". What did the delegation think of that in the light of the Government's professed commitment to ensuring that all citizens of Israel, whether or not they were Jews, became "shareholders" in the State? Secondly, she would like to know how the "Democratic Experience" programme introduced into eleventh and twelfth grade classrooms in 1997 was progressing, and what financial resources the Government had committed to the programme.

34. Mrs. JIMENEZ-BUTRAGUEÑO said that, while developments with regard to the Government's collaboration with NGOs were encouraging, she shared CERD's concerns regarding the legality and human rights implications of actions taken against Palestinians. The rights of Israelis and Palestinians in Israel should be the same.

35. Mr. ATLAN (Israel) said that the delay in producing Israel's report was due simply to over-optimism concerning the resources that would be available for the task. There was still no specific body provided with the necessary technical and manpower resources, and the report had been the result of an enormous and largely improvised effort.

36. Mr. BLASS (Israel), replying to Mr. Sadi's question about borders, said that after the 1949 war of independence Israel had agreed on ceasefire lines

with the neighbouring States of Egypt, Jordan, Lebanon and Syria. As a result of the peace agreements signed in 1977 and 1994 with Egypt and Jordan respectively, the borders with those two countries were now well defined. However, he agreed that borders had still to be clarified with Syria and Lebanon. Both the Oslo Agreement and the Interim Agreement stated that those matters were to be discussed in final status negotiations between Israel and its neighbours, on a bilateral basis.

37. With regard to the existence of a bi-national State in Israel, the relevant United Nations resolution in 1947 had referred specifically to a Jewish State, while also recognizing the existence of the Arab minority. Israel remained a Jewish State, and the Government was committed to preserving it as a homeland for all Jews, wherever they might come from. However, at the same time it was fully aware of the need to respect the rights of the sizeable Arab minority and of the smaller Druze, Circassian and Christian communities. Arabic was an official language of Israel, and Arab parties could be found in its Parliament. The Government did not consider the task of reconciling the rights of all Israel's communities within a Jewish State to be impossible.

38. With regard to the applicability of the Covenant in the Gaza Strip and West Bank, the Interim Agreement spelled out the specific responsibilities of Israel and the Palestinian Authority in such a way that it would be difficult to argue that Israel exercised effective control in them. Under the Interim Agreement, the Palestinian Authority had responsibility for major areas such as health, education, social security and employment, and was even responsible for education in the territories where there was almost no Palestinian population - those designated in the Interim Agreement as "Area C". While it was true that Israel and the Palestinian Authority shared responsibility for certain activities, and Israeli hospitals often treated Palestinians when appropriate care could not be provided in Palestinian hospitals, the situation was such that Israel would find it impossible to provide additional data on, for example, infant mortality in the West Bank.

39. The administration of most matters concerning the Covenant had been transferred by Israel to the Palestinian Authority, and the latter was responsible for legislation and budget determination in their regard. Israel felt strongly that it had transferred effective control over the vast majority of issues relating to the Covenant.

40. Mr. RIEDEL said that his question had concerned on the one hand the general applicability of the Covenant to the State of Israel, the Gaza Strip and the West Bank, but on the other the functional control that Israel exercised in the four occupied territories. The example of health illustrated the difficulty of reconciling those two aspects. While it could not be argued that Israel had overall responsibility for health, it certainly exercised functional jurisdiction in the sense that it could, for example, block the transfer of a patient from one Palestinian hospital to another, by an externally imposed border closure.

41. Mr. SADI said that, in relation to Palestinian responsibility for spheres of authority governed by the provisions of the Covenant, the truth was that under current conditions the Palestinians were merely in control of the situation within enclaves. The fact that Israel had overall control of

movement of people and goods in and out of those enclaves, since they were surrounded by areas under Israeli military authority, necessarily meant that the lives of the people living in the enclaves, including aspects affecting their education and health, were ultimately under Israeli jurisdiction.

42. Mr. CEAUSU asked whether the laws and regulations adopted by Israel with respect to the occupied territories, or the decisions of the occupying military authorities in relation to those territories, were still applicable in the areas now under the jurisdiction of the Palestinian authorities. Did persons wishing to enter those areas or to import goods have to deal with the Israeli authorities first?

43. Mr. AHMED said it was clear that Israel had effective control of the West Bank and Gaza Strip not only because it countenanced the building of Jewish settlements there but also because of the adverse economic, social and cultural effects closure of borders had on the Palestinian population.

44. Mr. GRISSA said that, although Israel claimed to have no authority in the areas under the jurisdiction of the Palestinian authorities, it was clear that the latter were unable to take any decision that had not been sanctioned by the former. Palestinians might have token control over some hospitals, schools and universities, but transfer of the sick or movement of a student to a hospital or university in another area depended on Israeli consent, while in the opening of a school or hiring of a teacher account would have to be taken of Israeli opinion. Furthermore, the Palestinian authorities were unable to open an air or sea port without Israeli permission.

45. Mr. BLASS (Israel) welcomed the fact that Mr. Riedel appeared to recognize that the conditions relating to applicability of the Covenant differed between the West Bank and Gaza Strip and Israel itself. Under the Interim Agreement, the Palestinian authorities had full jurisdiction in all matters covered by the provisions of the Covenant, including such educational concerns mentioned by Mr. Grissa as opening schools and hiring teachers. It was true that there were problems about air and sea ports because of the specific security issues involved, but negotiations had been under way on the subject for the past three years and it was hoped that an agreement would soon be reached. Admittedly, too, problems were raised by closure of enclaves, but Israel had established procedures to cope with the resulting social, cultural and economic difficulties; he would describe them when the discussion had moved on to that subject. It was particularly difficult to resolve the question of applicability in the current very fluid situation in which the Palestinian authorities were taking on increasing areas of responsibility. It was not possible to claim that the various agreements reached in recent years could have no effect on the legal obligations of the two parties. As to settlements, he was unsure which article of the Covenant had any bearing on the matter, but the situation prevailing since 1979 was that no private property was to be taken for settlement building. The issue was a major one that would ultimately have to be resolved by the two parties together during the negotiations leading to the Final Status agreement.

46. The CHAIRPERSON said that there were many different aspects to the current discussion, some of which would be discussed under later points on the list of issues. It was clear that the situation relating to application of

the Covenant in the occupied territories and the territories under Palestinian authority was atypical and complex. However, it appeared to be accepted that Israel had direct responsibility in some areas covered by the Covenant, indirect responsibilities in others and, overall, significant legal responsibility across the board.

47. Mr. GRISSA asked whether the recent statement by the Israeli Minister of Foreign Affairs encouraging seizure of other people's land was to be considered an expression of the legal position in Israel.

48. Mr. AHMED said that the issue of settlements came within the purview of the Covenant because expropriation of land for that purpose affected the right to property of Palestinians.

49. Mr. RIEDEL noted that in the case of settlements it was more properly the right to housing, dealt with in article 11 of the Covenant, which was at issue. Nevertheless, the right to housing did have effects on property and property rights. Furthermore, separate matters such as education, health or movement of people or goods could not be dealt with in isolation, since they entered into the sphere of jurisdiction as a whole, with which the Covenant was concerned. Although some aspects of the Covenant were nominally under Palestinian authority in some areas, Israel was still in overall control and thus had full responsibility for its application. He welcomed the fact that Israel partially acknowledged some of that responsibility.

50. Mr. CEAUSU asked what system of law was applicable in the occupied territories. For example, what legislation governed the authorization to practise medicine?

51. Mr. BLASS (Israel) said that as he had not heard the statement of the Minister of Foreign Affairs he could not answer Mr. Grissa's question on the subject. Private individuals were not entitled to build settlements in the West Bank or Gaza Strip and would be prevented from so doing by the Israeli Government.

52. The CHAIRPERSON said that the statement referred to had been widely broadcast on the international media and could be accepted as fact. The Committee would note that the delegation did not wish to address the matter beyond stating that the Government had a duty to enforce the law.

53. Mr. SHANY (Israel), replying to Ms. Bonoan-Dandan's second question, said that Israel was considerably concerned about the statistics mentioned and determined to make every effort to combat racism in Israeli society. Incitement to racism was a criminal offence and there had been a number of trials and convictions under the relevant legislation. Under Israeli election law, political parties with a racist agenda were precluded from putting forward candidates for election. That applied not only to national but also to municipal elections. In addition to efforts to tackle the problem through the law, educational measures were also being introduced. A recent report had recommended that the civics curriculum in schools should be reformed in order to promote greater tolerance and respect for human rights and democracy. The Ministry of Education had already begun training teachers for the purpose. A number of educational programmes were being implemented to promote greater

tolerance and mutual respect between Jews and Arabs, between religious and non-religious Jews and between other groups where there was friction. The Democratic Experience programme would be continuing and had broadened its scope. Further information on its progress would be provided to the Committee in Israel's next report.

54. Mr. BLASS said that the legislation applicable in the West Bank and Gaza Strip was determined by the history of the area. Until 1917, the region had for 400 years been part of the Ottoman Empire, some of whose legislation, particularly in the area of land and property rights, was still in force. During the period of their mandate in Palestine in 1917-1948, the British authorities had also introduced legislation, some of which, such as the law on tort, was still in force, both in Israel and in the West Bank. During the period 1950-1967, Jordan had enacted legislation in the West Bank, some of which was still valid, such as the 1966 legislation relating to planning and building. During that time, Egypt, through a military government and a civil governor, had legislated in the Gaza Strip. From 1967 until 1994 in the Gaza Strip and 1995 in the West Bank, Israel had introduced legislation in the form of military orders issued under the international law on occupied territories. In Gaza and Jericho, the Palestinian authority had been entitled to introduce legislation in the spheres entrusted to it since 1995. Following the election of the Palestinian Council in January 1996, it had, as laid down in the Interim Agreement, been legislating in the areas under its jurisdiction. In the areas where Israel still had jurisdiction under the Interim Agreement, it had been agreed by both parties that the military government would remain in place and continue to govern. It was therefore difficult to specify, without consulting the local authorities, what was the source of the legislation in force on certain matters, such as authorization to practise medicine.

55. Import and export of goods from the areas under Palestinian authority was governed by a special protocol to the Interim Agreement. Joint committees representing the Israeli and Palestinian authorities met to solve any problems that arose. Customs dues on goods entering Israel in transit to Palestinian areas were collected by the Israeli authorities and forwarded to the Palestinian authorities for inclusion in their operating budget.

56. The Interim Agreement placed very little limit on the entry of temporary visitors to Gaza or the West Bank or on the departure of persons who wished to leave the area. The few cases of restriction in any one year were on grounds of security. Permanent immigration currently required Israeli approval under the Interim Agreement, but the situation would change under the Final Status agreement.

57. With regard to settlements and the right to housing, Israel's policy following a Supreme Court decision in 1979 was that settlements could only be established on public land. The Israeli Army had spent a considerable time determining what Palestinian land was in private hands and thus ineligible for settlement. Procedures had been provided for appeal against any decision in that respect. Under the Interim Agreement, the Palestinian authorities were currently responsible for matters relating to housing for Palestinians. Further information could be given when land use and housing were under discussion.

58. Mr. GRISSA said that public land should also be considered as belonging to the Palestinians. Much of the land in Palestine was tribal land, with a very small proportion in private hands. Public land in any country was also part of its capital, so expropriation would be depriving future generations of the indigenous population of any benefit from it.

Status of the International Covenant on Economic, Social and Cultural Rights

59. Mr. RIEDEL sought clarification regarding the current Israeli Government's position on the draft Basic Law: Social Rights, which had originally been submitted to the Knesset in 1993. What plans or policies did the Government have to ensure respect for social rights in future in the territory over which it had jurisdiction?

60. Mrs. JIMENEZ BUTRAGUEÑO, recalling the Israeli representative's remark that in the absence of a constitution, the Supreme Court was responsible for dealing with cases of human rights violations, asked for information on specific cases handled by the Supreme Court concerning the rights enshrined in the Covenant.

61. Mr. CEVILLE, observing that the role of courts was to interpret and apply the law, wondered how the Supreme Court could ensure respect for social rights in Israel when they had not yet been defined in a basic law. Were such matters entirely at the discretion of judges, or did they have other tools at their disposal to uphold human rights principles.

62. Mr. ATLAN (Israel) explained that there were two versions of the draft Basic Law on social rights. The first, dating from 1993, had been passed by the Knesset on first reading in 1996 and had been drafted along the lines of the two other basic laws enacted in 1992 on human dignity and liberty and freedom of occupation respectively. If the basic law was enacted, social rights would be accorded the same legal status as the other basic human rights. Recently, however, the Ministry of Justice had prepared a further version of the draft Basic Law, which was more declaratory in nature. He could not say at that juncture what the Government position on the bill was, since it had not yet been properly discussed, in accordance with standard procedures, by other ministries concerned and academics, prior to its submission to the Knesset.

63. The concept of the constitutionalization of human rights was fairly new to Israel and he was not entirely convinced that interpretation of the law was necessarily more effective than judicial measures. It was worth noting that, long before the enactment of the two basic laws of 1992, the Supreme Court of Israel had traditionally taken an activist stance on human rights in cases brought before it, drawing on sources such as internationally recognized human rights standards and democratic principles to overcome lacunae in national legislation. The strength of what was known as "The judicial bill of human rights" should not be overlooked. Israel's report tried to highlight the willingness of the courts in Israel to continue to resort to such means for implementing economic, social and cultural rights pending the enactment of appropriate legislation.

64. Mr. BLASS (Israel) said that the absence of a Constitution in Israel had never prevented the Supreme Court from recognizing the fundamental importance of human rights, as borne out by a number of famous appeal cases brought before it and dating from as early as 1949, when Israel had been only a fledgling democracy. For instance, in 1953 the Ministry of the Interior, using a British enactment, had closed down two newspapers which had carried anti-government articles, fearing that they would foment public disorder. The newspapers had lodged an appeal with the Supreme Court, which had recognized the basic democratic right of the appellants to freedom of speech and of the press. Aside from those tools, the Supreme Court also relied on administrative law to protect human rights and prevent discrimination.

65. Mrs. BONOAN-DANDAN asked whether an Israeli citizen would have a clear understanding of his basic rights from the draft Basic Law on social rights.

66. Mrs. JIMENEZ BUTRAGUEÑO wondered how often the Supreme Court had found in favour of Palestinians who had alleged violations of their rights.

67. Mr. SADI said that it would be useful if Committee members could have access to a copy of the draft Basic Law under discussion.

68. Mr. ATLAN (Israel) said that, as well as the original 1993 version of the draft Basic Law and the new draft circulated recently by the Ministry of Justice, a number of private members' bills on social rights had also been submitted to the Knesset.

69. The CHAIRPERSON did not feel that private members' bills were comparable to a text circulated by the Ministry of Justice, which represented an important step in the legislative process. The Committee would probably find it more useful to consult the most recent version from the Ministry of Justice, which presumably reflected the current Government's thinking on the issue.

70. Mr. ATLAN (Israel) explained that human rights legislation had been problematic since the founding of the State of Israel: over the years, numerous pieces of draft legislation had been circulated to no effect. There was actually a specific clause in the agreement between the parties forming the current coalition government, according to which no new fundamental laws could be passed during its term of office. It could therefore not be claimed that the latest draft circulated by the Ministry of Justice was representative of the Government's views on the issue.

71. The CHAIRPERSON concluded that there was no basic law in Israel dealing with social rights as defined in the Covenant and no prospect of such a law being passed under the current coalition government. Nonetheless, the draft prepared by the Ministry of Justice would seem to be the version of greatest interest to the Committee in its work.

72. Mr. ATLAN (Israel) said the assertion that social rights were not covered by existing legislation in Israel required some qualification. There was currently a debate under way in the country as to whether the basic law on human dignity and liberty might be interpreted as including economic, social and cultural rights on the grounds that they were essential in guaranteeing

human dignity. The President of the Supreme Court of Israel had recently listed three possible interpretations of the basic law and favoured the intermediate one, which was likely to be followed up by the Government, that only the right to adequate housing (article 11 of the Covenant) was encompassed in the concept of human dignity.

73. Mr. RIEDEL expressed concern that the latest version of the draft Basic Law prepared by the Ministry of Justice, which seemed considerably more diluted than the original text, would not be sufficient to guarantee implementation of social, economic and cultural rights as defined in the Covenant.

74. Mr. BLASS (Israel) said that, given the tradition of the courts of upholding the basic rights and freedoms of citizens, notwithstanding the absence of a constitution, he was confident that whatever version of the draft law was finally adopted would be interpreted by the courts of law in the interests of Israeli citizens.

Discrimination

75. Mr. THAPALIA said he would like more information as to whether Israel really intended to protect the rights of all its citizens by ensuring equal opportunities and rights in all spheres, particularly employment and land use. The activities of the Jewish National Fund to encourage Jewish immigration and settlement meant that there would soon be no land left for ethnic minorities in certain areas. Did the Government plan to allow such practices to continue? It was worth noting that in the territory of Indian Kashmir, to maintain the status quo of the population and prevent discrimination, land could be purchased only by local residents.

76. Mr. SADI observed that the World Zionist Organization and other Zionist associations enjoyed a special legal status and other privileges although the basic thrust of their activities was to promote the interests of citizens of Jewish origin exclusively. He expressed particular concern about the sale of State-owned land and property under the Sharon-Burg proposal. To what extent were such practices still condoned?

77. Mrs. BONOAN-DANDAN asked for the Committee to be provided with a copy of a covenant signed in 1954 between the Zionist Executive and the Israeli Government which clarified the legal status of the World Zionist Organization, the Jewish National Fund and the Jewish Agency for Israel. She would also like to consult the appendix to that covenant on taxation matters. Regarding the Sharon-Burg proposal, she wondered whether Palestinians were entitled to own land under it.

78. Mr. GRISSA said that discrimination could be assessed only by results, not by the existence of legislation. According to the information provided in the report, although Arabs and others represented almost 20 per cent of the population of Israel, they accounted for only about 12 per cent of the workforce or people on vocational training programmes. What was the explanation for that, if not discrimination?

79. Mr. CEAUSU expressed concern about the status of foreign workers in Israel. According to statistics provided, there were currently more illegal than legal ones. The government policy of issuing work permits to foreigners for a single employer merely seemed to perpetuate the problem of illegal employment and, moreover, was not in line with the concept, embodied in article 6 of the Covenant, of freedom to choose employment. He hoped that the current legislation would be amended.

The meeting rose at 1.05 p.m.